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No. 94-1443

In the
Supreme Court of the United States
October Term, 1994

RICHARD ADAMS and BALANCE CHOW,
Petitioners,

v.

FRED O. DICKINSON, III, and LAWTON CHILES
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

RESPONDENTS' BRIEF IN OPPOSITION

ROBERT A. BUTTERWORTH
Attorney General
ERIC J. TAYLOR
Assistant Attorney General
(Counsel of Record)
Department of Legal Affairs
The Capitol
Tallahassee, FL 32399-1050
(904) 488-5899

Counsel for Respondents

30p

QUESTION PRESENTED

Are state courts required to entertain suits brought under 42 U.S.C. § 1983 in state tax cases when such suits are barred in the federal courts by the Tax Injunction Act, 28 U.S.C. § 1341 and the challenging taxpayer has full review of his federal "rights" using state remedies?

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 2

REASONS FOR DENYING THE WRIT 11

1. THE OPINION OF THE SUPREME COURT OF FLORIDA DOES NOT CONFLICT WITH EITHER *HOWLETT v. ROSE*, 496 U.S. 356(1990) or *DENNIS v. HIGGINS*, 498 U.S. 439 (1991) 12

2. THE DECISION BELOW DOES NOT CONFLICT WITH OTHER STATE SUPREME COURTS ON THE SAME QUESTION OF FEDERAL LAW 20

CONCLUSION 22

TABLE OF AUTORITIES

CASES:

Adams v. Mellon,
U.S. District Court, M.D. Fla., Case No. 91-652-CIV-ORL-18, *affirmed* (per curiam), U.S. Court of Appeals, 11th Circuit, Case N0. 92-2031 (July 20,1992).....4,5

Ashton v. Cory, 780 F.2d 816
(9th Cir. 1986).....18

California v. Grace Brethren,
457 U.S. 393 (1982).....17

Davis v. City of Elkhorn, 132 Wisc.2d 394,
393 N.W.2d 95 (1986).....21

Dennis v. Higgins, 498 U.S. 439 (1991)
passim

Department of Revenue, et al. v. Kuhnlein, et al., 646 So. 2d 717 (Fla. 1994).....passim

Department of Revenue v. Magazine Publishers of America, Inc., 604 So.2d 459 (Fla. 1992)..19

Division of Alcoholic Beverages and Tobacco v. McKesson Corporation, 524 So.2d 1000 (Fla. 1988) 19

Division of Alcoholic Beverages and Tobacco v. McKesson Corporation, 574 So.2d 114 (Fla. 1991) 19

Fair Assessment In Real Estate Assn. v. McNary, 454 U.S. 100 (1981).....13, 21

Golden State Transit Corp. v. City of Los Angeles, 493 U.S. 103 (1989).....13

Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293 (1943).....18, 19

Hill v. Department of Corrections, 513 So. 2d 129 (Fla. 1987) 14

Howlett v. Rose, 496 U.S. 356 (1990).....passim

Johnson v. Gaston County, 71 N.C. App. 707, 323 S.E. 381 (1984).....21

Kohn v. Central Distributing Co., 306 U.S. 531 (1939).....18

Kuhnlein v. Department of Revenue, Ninth Judicial Circuit Court, Case No. 92-6442 .....6, 7, 8

L.L. Beam, Inc. v. Bracy, 323 S.E.2d 381 (Tenn. 1991).....20

Linderkamp v. Bismarck School District No.1, 397 N.W.2d 76 (N.D. 1986).....20

Louisiana Life, Ltd. v. McNamara, 504 So. 2d 900 (La. App. 1 Cir. 1987).....21

McKesson Corporation v. Division of Alcoholic Beverages and Tobacco, 496 U.S. 18 (1990) 19

Monell v. New York City Dept. of Social Services 436 U.S. 658 (1978) 15, 16

National Private Truck Council, Inc. v. Oklahoma Tax Commission, 879 P.2d 137 (Okla.), *cert granted*, ___ U.S. ___, S.Ct. (1994).....11, 12, 20

Osceola v. Florida Department of Revenue, 893 F.2d 1231 (11th Cir. 1990), *cert denied*, 498 U.S. 1025 (1991) ...18

Raschke v. Blancher, 141 Ill.App.3d 813, 96 Ill.Dec. 711, 491 N.E.2d 1171 (1986) 21

Rosewell v. LaSalle National Bank, 450 U.S. 503 (1981) 18

Spencer v. South Carolina Tax Commission, 281 S.C. 492, 316 S.E.2d 386 (1984), *affirmed by an equally divided court*, 471 U.S. 82 (1985) 21

State v. Quill, 500 N.W.2d 196 (N.D.), *cert. denied*, ___ U.S. ___, 114 S.Ct. 173 (1993) 20

Stufflebaum v. Panathiere, 691 S.W.2d 271 (Mo. 1985).....21

Vann v. DeKalb County Bd. of Tax Assessors, 186 Ga. App. 208, 367 S.E.2d 381 (1988) 21

W.H. Backus v. Chivilis, 236 Ga. 370, 224 S.E.2d 370 (1976).....21

Wardair v. Department of Revenue, 455 So. 2d 326 (Fla. 1984), *affirmed*, 477 U.S. 1 (1986) 19

Will v. Michigan Department of State Police, 491 U.S.58 (1989).....15, 17

Winicki v. Mallard, 783 F.2d 1567 (11th Cir.), *cert. denied*, 479 U.S. 815 (1986) 18

Zizka v. Water Pollution Control Authority, 195 Conn. 682, 490 A.2d 509 (1985)...20, 21

STATUTES:

FEDERAL

28 U.S.C. § 1341 (Tax Injunction Act) .....passim

42 U.S.C. § 1983 (Civil Rights Act of 1871) .....passim

42 U.S.C. § 1988..... passim

FLORIDA

Statutes

Chapter 86, Florida Statutes.....19

Section 319.231, Florida Statutes .....passim

Section 320.072, Florida Statutes.....2

Section 320.072(1), Florida Statutes.....2, 4

Section 320.072(5), Florida Statutes.....2

Session Laws

Chapter 90-132, Laws of Florida.....2

Chapter 90-132, Section 74, Laws of Florida.....2

Chapter 90-132, Section 98, Laws of Florida.....2

Chapter 91-82, Laws of Florida.....2

Chapter 91-82, Section 9, Laws of Florida.....2

Chapter 91-82, Section 10, Laws of Florida.....3

Chapter 91-82, Section 13 Laws of Florida.....3

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RESPONDENTS' BRIEF IN OPPOSITION

OPINION BELOW

Petitioners seek review of *Department of Revenue, et al. v. Kuhnlein, et al.*, 646 So. 2d 717 (Fla. 1994), decision of the Supreme Court of Florida.

STATEMENT OF THE CASE

In 1990, the Florida Legislature passed "[a]n act relating to taxation" which contained an amendment to Section 320.072, Florida Statutes (1989). [1]/ *See* Chapter 90-132, Laws of Florida. Section 74 of Chapter 90-132 amended existing Section 320.072, Florida Statutes, by imposing an impact fee of $295.00 on all automobiles and certain other vehicles at the time of the automobile's "initial application for registration" in Florida. Section 320.072(1)(b), Florida Statutes (1990 Supp). The monies collected under this statute were deposited into the Law Enforcement Trust Fund of the Department of Highway Safety and Motor Vehicles. *See* Section 320.072(5), Florida Statutes (1990 Supp.) The law became effective on July 1, 1990. *See* Chapter 90-132, Section 98, Laws of Florida.

Because of certain collection problems, Section 320.072(1)(b), was rewritten during the 1991 legislative session. Ch. 91-82, Laws of Florida. Under Section 9 of Chapter 91-82, the $295.00 impact fee would no longer to be imposed on registration but "on each original certificate of title issued for

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[1]/ The Petitioners state that Section 319.231, Florida Statutes, was enacted by the Florida Legislature in 1990. This is an incorrect statement. Section 320.072 contained the initial "impact fee." This law was amended in 1990 to include the fee. Section 319.231, Florida Statutes, was not enacted until 1991. *See* Chapter 91-82, Section 9, Laws of Florida.

a motor vehicle previously titled outside of this state." The impact fee was imposed on a "title" and not on a person and only Florida residents were required to register and title vehicles in Florida. *See* Sections 320.02, 320.37 and 320.38, Florida Statutes (1989). Credit for Florida sales and use taxes paid to the State was applied to the $295.00 impact fee. Section 9, Chapter 91-82, Laws of Florida. No credit was given for sales taxes paid in another state. The funds generated by the impact fee were deposited into the General Revenue Fund. *Id.* The altered and expanded impact fee provisions were removed from Section 320.072, Florida Statutes [2]/, and recodified as Section 319.231, Florida Statutes (1991). The act became law on July 1, 1991. *See* Chapter 91-82, Section 13, Laws of Florida.

On May 3, 1988, Petitioner Richard Adams, while a resident of Texas, purchased a 1988 Chevrolet Beretta. Mr. Adams paid Texas sales taxes at the time of the purchase. Mr. Adams moved to Florida in April, 1990, and became a Florida resident. In February, 1991, Mr. Adams applied to the State of Florida to register and title his Chevrolet. At the time of applying for the Florida certificate of title and registration, Mr. Adams was required to

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[2]/ See Section 10, Chapter 91-82, Laws of Florida.

pay the $295.00 impact fee.[3]/ Mr. Adams received no credit in Florida for the sales taxes he paid to Texas in 1988 at the time he purchased the Chevrolet.

In August, 1990, Petitioner Balance Chow, while a resident of California, purchased a used 1979 Toyota Corona. Mr. Chow paid California sales taxes at the time of the vehicle's purchase and then titled and registered his automobile in that state. Mr. Chow moved to Florida in August, 1991, and became a Florida resident. At the time of the initiation of this action in 1991, Mr. Chow had not yet applied to the State of Florida to register and title his Toyota.

The Petitioners initially brought this action in the United States District Court for the Middle District of Florida (Orlando Division). *Adams v. Mellon*, USDC, MD Fla., Case No.91-652. They challenged the constitutionality of Section 319.231, Florida Statutes (1991), claiming that the law discriminated against interstate commerce, was in violation of the Commerce Clause, infringed on the Petitioners' right to travel and violated the Equal Protection Clause of the 14th Amendment to the United States

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[3]/ While Mr. Adams claims in Para.12 of his Complaint to have paid the impact fee, Section 319.231 was not yet in existence in February, 1991. Mr. Adams, if he did pay the impact fee, would actually have paid the impact fee under the provisions of Section 320.072(1)(b), Florida Statutes (1990 Supp.), a fact he later admits in para. 10.

Constitution. Petitioners sued Lawton Chiles, Governor of Florida, and Leonard R. Mellon[4]/, Executive Director of Florida's Department of Highway Safety and Motor Vehicles, in their "official capacity." Petitioners brought the action under 42 U.S.C. § 1983 seeking declaratory and injunctive relief as well as an award of attorney's fees under 42 U.S.C. § 1988. Respondents moved to dismiss the case on jurisdictional grounds based upon the Tax Injunction Act, 28 U.S.C. § 1341. The case was dismissed on December 13, 1991, with the district court basing its decision on the Tax Injunction Act. Petitioners appealed the decision to the 11th Circuit Court of Appeals which affirmed, *per curiam*, the District Court's ruling. *See Adams v. Mellon*, U.S. Court of Appeals, 11th Circuit, Case No. 92-2031(July 20, 1992). After the federal appellate court affirmance, this case was brought in circuit court.

The Petitioners filed their action in Circuit Court for the Ninth Judicial, in and for Orange County, Orlando, Florida, on July 30,1992. *Adams et al. v. Dickinson, et al.*, Case No. CI92-5912. Petitioners' complaint was, in all material aspects, identical to the complaint they had earlier filed in the

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4/ The Suit initially named Mr. Mellon who was then the Executive Director of Florida's Department of Highway Safety and Motor Vehicles. Mr. Mellon died on and was replaced by Mr. Fred O. Dickinson, III, the present Respondent and Executive Director of Florida's Department of Highway Safety and Motor Vehicles.

United States District Court. Like the earlier case, Petitioners challenged the constitutionality of Section 319.231, Florida Statutes (1991), claiming that the law discriminated against interstate commerce, was in violation of the Commerce Clause of the United States Constitution, infringed on the Petitioners' right to travel, denied them due process and violated the Equal Protection Clause of the 14th Amendment to the United States Constitution. Additionally, Petitioners claimed a violation of the Florida Constitution. Petitioners sued Lawton Chiles, Governor of Florida, and Fred O. Dickinson, III, Executive Director of Florida's Department of Highway Safety and Motor Vehicles. Both were sued in their "official capacity." Petitioners brought the state action under 42 U.S.C. § 1983 seeking declaratory and injunctive relief as well as an award of attorney's fees under 42 U.S.C. § 1988.

About the same time that Petitioners were filing their action in state court, other persons who paid the impact fee filed a class action suit seeking a refund of fees paid. *Kuhnlein v. Department of Revenue*, Ninth Judicial Circuit Court, Case No. 92-6442.[5]/ While the Class Plaintiffs sought a

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[5]/ Hereafter, the following designation will be used to distinguish between the plaintiffs of the consolidated cases: the plaintiffs of the *Kuhnlein* case will be referred to as the "Class Plaintiffs," plaintiffs of the *Adams* case below will be referred to their status before this Court, Petitioners.

declaration that the impact fee was unconstitutional under the Commerce Clause, they did not frame their action under § 1983 and did not seek attorney's fees under § 1988. The Class Plaintiffs restricted their case to Florida law and remedies. The Class Plaintiffs moved to have their case consolidated with the *Adams* case. The *Kuhnlein* and *Adams* cases were consolidated on April 22, 1993.

The procedural issues, as framed by the Respondents for the Florida Ninth Judicial Circuit Court, and as pertinent to this case, were:

> Whether the Florida Circuit Court had jurisdiction to hear the Petitioners' civil rights claim, brought under 42 U.S.C. Section 1983, when such a claim was barred by the doctrine of sovereign immunity?; and,
>
> Whether the Florida Circuit Court had jurisdiction to hear the Petitioners' civil rights claim, brought under 42 U.S.C. Section 1983, when such a cause of action could not be brought in, and in fact was dismissed from, a federal court because of the Tax Injunction Act, 28 U.S.C. Section 1341 and the Eleventh Amendment to the United States Constitution?

Petitioners and the Respondents cross moved for summary judgment with a hearing held on the motions on October 5, 1993. The trial court issued two

separate decisions, one in *Kuhnlein* and one for *Adams*, on November 30, 1993. In both judgments, the Circuit Court held Section 319.231, Florida Statutes, was unconstitutional as it violated the Commerce Clause of the United States Constitution by discriminating against used vehicles that are in Florida for the first time. This part of the two orders were rendered under Florida's declaratory judgment act, Chapter 86, Florida Statutes.

In *Adams*, the trial court also ruled that the Petitioners, could bring a 42 U.S.C. § 1983 action in state court against the State, its agencies and officials in a tax matter. The circuit court held the Tax Injunction Act did not preclude the action in a state court and that this Court's decisions in *Howlett v. Rose*, 496 U.S. 356 (1990), and *Dennis v. Higgins*, 498 U.S. 439 (1991), required enforcement of a § 1983 claim in a Florida court. Based on this reasoning, the Circuit Court granted injunctive relief, though **not** declaratory relief, to the Petitioners under § 1983. [6/]

The Defendants filed their Notice of Appeal on December 2, 1993. The Class Plaintiffs in *Kuhnlein* moved the Fifth District Court of Appeals to have the case certified to the Supreme Court of Florida, under Rule 9.125, Florida Rules

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[6/] No injunctive relief was granted to the Class Plaintiffs. Their relief was restricted to declaratory relief an and order to refund all monies collected by the State.

of Appellate Procedure, as a question of great public importance. On January 7, 1994, the Fifth District Court of Appeal issued an order so certifying the question to the Florida Supreme Court. The Florida Supreme Court accepted jurisdiction on January 11, 1994.

On January 26, 1994, while the case was pending before the Supreme Court of Florida, the Petitioners filed a motion for attorney's fees, based upon § 1988, with the Supreme Court. The court, after briefing and oral argument, issued its opinion on September 29, 1994, in the combined cases. *Department of Revenue v. Kuhnlein*, 646 So. 2d 717 (Fla. 1994). The court affirmed, finding that Section 319.231, Florida Statutes, was unconstitutional because the impact fee violated of the Commerce Clause.

In the proceeding before the Florida Supreme Court there was virtually no discussion of 42 U.S.C. § 1983. The court noted that the Petitioners had brought a civil rights action challenging the impact fee. *Id.*, 646 So. 2d, at 720. The court did not again address the § 1983 issue until very late in its opinion. In discussing its handling of the § 1983 issue, stated:

> Because the statute must be declared facially unconstitutional, we need not **and will not** address the other issues raised by the parties. We note the procedural issues the State has raised with respect to the civil rights plaintiffs. However, even

> assuming that Section 1983 was an inappropriate means of suing in this instance, those parties that chose this method are still entitled to have their petitions treated as a request for a proper remedy. Art. V, § 2(a), Fla. Const. At a minimum, we would be required to treat all of the petitions filed below as **requests for relief by way of declaratory judgment. Relief accordingly will be granted to all on that basis.**

Id., 646 So. 2d, at 725 (e.s.). Thus, the Florida Supreme Court did not address the trial court's holding that Florida courts were required to entertain § 1983 actions, did not affirm the trial court's injunctive relief to the Petitioners and did not address the Respondents' legal arguments against the trial court's holding as it pertains to state tax matters in state courts.

On October 11, 1994, Petitioners served a motion for rehearing or clarification. In their motion, the Petitioners recognized that the Supreme Court "found it unnecessary to decide the issue of whether Section 1983 provided a remedy in this case . . ." Petitioners then requested the court to "clarify [the Supreme Court's] opinion to the lower tribunal to award attorneys' fees and costs under Section 1988." In their motion for clarification, the Petitioners also reminded the Supreme Court that

Petitioners had previously filed a request for appellate attorney's fees in the case, but that the Court had not ruled on that motion.

On November 30, 1994, the court specifically denied the Petitioners' request for clarification and the request for appellate attorney's fees under 42 U.S.C. § 1988. *Department of Highway Safety and Motor Vehicles v. Adams*, 646 So. 2d, at 726.

REASONS FOR DENYING THE WRIT

The decision in this case does not merit further review. While the opinion of the Supreme Court of Florida did not permit the Petitioners to achieve any of the relief they requested under 42 U.S.C. § 1983, that result is not in conflict with the Supremacy Clause of the Constitution or any decision of this Court. This Court has never mandated that state courts must, under all circumstances and without exception, entertain a § 1983 claim for relief in a state court. Such a decision would be particularly inappropriate in this case where the claim for relief could not be entertained in a federal court. Petitioners initially sought their § 1983 relief in a federal court but were dismissed therefrom based on the Tax Injunction Act. Prohibiting use of § 1983 in a state court tax refund case does not upset the balance of judicial uniformity required by the Supremacy Clause and federalism.

Petitioners also rely on the petitioner's position in *National*

Private Truck Council, Inc. v. Oklahoma Tax Commission, No. 94-688, and suggest that the states are "sharply divided" on the question of whether the states can enforce "federal rights" in state courts on state tax matters. This is just not so. The states are all in unison; "federal rights" clearly can be and are enforced and vindicated in state tax matters before state courts without aid of § 1983. The ability to have federal rights raised and vindicated is the very cornerstone of the Tax Injunction Act and the multitude of decisions by this Court interpreting that Act and the phrase "plain, speedy and efficient" remedy. Those wishing to preserve their federal rights in a tax case can easily do so in a state court. The Petition in this case , therefore, should be denied.

1. **THE OPINION OF THE SUPREME COURT OF FLORIDA DOES NOT CONFLICT WITH EITHER *HOWLETT v. ROSE*, 496 U.S. 356 (1990) or *DENNIS v. HIGGINS*, 498 U.S. 439 (1991)**

Contrary to the Petitioners' claim, the opinion of the Supreme Court of Florida is *not* contrary to *Howlett v. Rose* or *Dennis v. Higgins*. Neither *Dennis* nor *Howlett* addressed Petitioners' assertion that a state court is **required** to entertain a federal remedy, such as 42 U.S.C. § 1983, in a state tax case. This is particularly important when independent state's remedies adequately address federal constitutional rights and, as a result, a federal court is prohibited from

exercising jurisdiction under the Tax Injunction Act, 28 U.S.C. § 1341, and this Court's decision in *Fair Assessment In Real Estate Assn. v. McNary*, 454 U.S. 100 (1981). Petitioners had their federal constitutional claims addressed in the state court. The Supreme Court of Florida declared Section 319.231, Florida Statutes, violated the Commerce Clause, Art. I, § 8, United States Constitution. Moreover, Petitioners received all the substantive relief they requested, though the court granted that relief through state law remedies.[7]/

Neither *Dennis* or *Howlett* are in conflict with the Florida Supreme Court's opinion. *Dennis* was part of a series of cases in which this Court addressed whether or not a particular part of the Constitution or laws of the United States created individual rights that could be vindicated, upon violation, in an action under § 1983. *See, e.g. Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, (1989) (Supremacy Clause does not create rights enforceable under § 1983). The issue, as framed at the beginning of *Dennis*, was "whether suits for violations of the Commerce Clause may be brought under 93 Stat. 1284, as amended, 42 U.S.C. § 1983." *Dennis*, 498 U.S., at 440. This was the only issue presented to this Court. Therefore, *Dennis*'

7/ The Class Plaintiffs also received their retroactive relief in the form of a refund of the impact fees paid. *See Kuhnlein*, 646 So. 2d, at 726-727.

holding is limited to the ruling that a Commerce Clause violation can state a claim under § 1983 in state or federal court. But the Court never addressed, much less ruled, that state courts are required to entertain such suits. The fact that a Commerce Clause violation does state a § 1983 claim and may be heard in a state court, however, does *not* eliminate a state's immunity from such § 1983 suits.

Dennis has often confused persons challenging state taxes because, by coincidence, *Dennis*' Commerce Clause/§ 1983 issue arose out of a state case that just happened to involve a state tax. The holding of *Dennis* would not have been any different if the facts of that case had instead involved a different Commerce Clause violation, for example, a state law affecting interstate banking. In other words, the underlying tax dispute had no effect whatsoever on the resolution of the issue.

Howlett is also distinguishable from this case. Howlett initiated a § 1983 suit against the School Board of Pinellas County in the Circuit Court in Pinellas County. *Howlett*, 496 U.S. at 359. Florida's circuit court, relying on the Florida Supreme Court's decision in *Hill v. Department of Corrections*, 513 So. 2d 129 (Fla. 1987), dismissed Howlett's § 1983 claims. *Howlett*, 496 U.S. at 359. This Court reversed that decision, holding that Howlett's § 1983 claims against the School Board could be heard in a Florida State Court. The Court reasoned that, unlike the State

which was not a "person" within the meaning of § 1983 and could not be sued under that law in state or federal court, *Howlett*, at 496 U.S., at 376, the School Board was a "person" under § 1983 and would "be subject to suit under § 1983 in a federal court." *Howlett* , 496 U.S., at 365. That being the case, the Court held the state court could not then use a state law immunity to bar the federal claim in the state court. *Howlett*, at 496 U.S., at 376.

There are two key distinctions between this case and *Howlett*. The first is the governmental body being sued and whether that governmental body could be sued in federal court in the first instance. Under *Howlett*, local government agencies, which are <u>not</u> protected by the Eleventh Amendment from suit in federal court, can be sued under § 1983 in either a state or federal court. *Will v. Michigan Department of State Police*, 491 U.S.58, 70 (1989) ("States are protected by the Eleventh Amendment while municipalities are not) *citing Monell v. New York City Dept. of Social Services* 436 U.S. 658, 690, n.54 (1978). The rationale of *Will* is that § 1983 was not "intended to disregard the well established immunity of a State from being sued without its consent." *Will*, 491 U.S., at 69. In other words, § 1983 does not authorize an action against a state in state court. *Howlett*, 496 U.S., at 356. Therefore, if a § 1983 action cannot be brought against a state in federal court, such a federal remedy cannot be heard in a state court. *Howlett* is consistent with both *Will*

(states cannot be sued) and *Monell v. New York City Department of Social Services*, supra (local governmental authorities are "persons" under § 1983 and can be sued in state or federal court).

The second distinction is the fact that a state law basis was not used, in contrast to what occurred in *Howlett*, to deny Petitioners' federal remedy under § 1983. The underlying purpose of the Supremacy Clause itself, uniformity, does not require the states to entertain a § 1983 claim in a tax matter in a state court. The fact that states may deny litigants the use of § 1983 in state tax matters in state courts is **not** inconsistent with the Constitution or any decision of this Court. To the contrary, the results of the state courts are consistent with the underlying thesis of *Howlett*; the need for uniformity, concurrency and consistency in jurisdiction that is mandated by the Supremacy Clause of the Constitution. *Howlett*, at 496 U.S., at 367. This Court discussed in detail in Part III of *Howlett* the meaning and need for uniformity and concurrency that has been created by the Supremacy Clause in the phrase "supreme Law of the Land." *Howlett*, 496 U.S., at 367-375. Suffice it to say that where federal remedial actions can and are heard in federal courts, state courts cannot create reasons not to hear the federal claim. That was the failing of the Florida courts in *Howlett*; those courts used a Florida law to defeat the hearing of a federal claim under § 1983 when that

very claim could have been asserted against the School Board in a federal court.

However, the legal landscape is quite different here. Unlike *Howlett*, Florida, and other state courts that have not entertained a § 1983 claim in a state tax matter are not utilizing a state law reason to deny a federal claim that could be heard in a federal court. Because of the Tax Injunction Act, as well as the Eleventh Amendment and the reasoning of *Will*, state tax matters cannot be heard in a federal court. This very case was dismissed from federal court. Rather than there being an inconsistency, the refusal to entertain a § 1983 claim in a state tax matter is consistent and uniform with federal law. Consequently, the Supremacy Clause is not injured. Federalism and the uniform enforcement of federal law is upheld.

But even where a state court, in a state tax action, denies a party the use of the federal remedy of § 1983, that does not mean the party is without an avenue to address his constitutional rights. In order for the states to maintain their immunity from having state tax matters heard in a federal court, Congress has required in 28 U.S.C. § 1341 that the states provide a "plain, speedy and efficient [state] remedy." This Court has said that a state remedy is "plain, speedy and efficient" when the taxpayer has the opportunity to pay the disputed tax and seek a refund, *California v. Grace Brethren*, 457 U.S. 393, 417 (1982),

Rosewell v. LaSalle National Bank, 450 U.S. 503, 517 (1981), or has the opportunity to assert a defensive argument against the assessment or collection of a state tax in a judicial proceeding, *Ashton v. Cory*, 780 F.2d 816, 819-20 (9th Cir. 1986) (*citing Kohn v. Central Distributing Co.*, 306 U.S. 531, 533-34 (1939)). As this Court said in *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 300-301 (1943):

> [I]t is the court's duty to withhold such relief when, as in the present case, it appears that the state legislature has provided that on payment of any challenged tax to the appropriate state officer, the taxpayer may maintain a suit to recover it back. In such a suit he may assert his federal rights and secure a review of them by this Court. This affords an adequate remedy to the taxpayer, and at the same time leaves undisturbed the state's administration of its taxes.

There can be no question that Florida has a "plain, speedy and efficient remedy." Not only has the Eleventh Circuit Court of Appeals made that specific finding, see *Osceola v. Florida Department of Revenue*, 893 F.2d 1231 (11th Cir. 1990), *cert denied*, 498 U.S. 1025 (1991); *Winicki v. Mallard*, 783 F.2d 1567, 1570 (11th Cir.), *cert. denied*, 479 U.S. 815 (1986), but various

cases arising in the Florida state courts such as *Wardair v. Department of Revenue*, 455 So. 2d 326 (Fla. 1984), *affirmed, Wardair v. Department of Revenue*, 477 U.S. 1 (1986); *Division of Alcoholic Beverages and Tobacco v. McKesson Corporation*, 524 So.2d 1000 (Fla. 1988), *reversed McKesson Corporation v. Division of Alcoholic Beverages and Tobacco*, 496 U.S. 18 (1990), *on remand Division of Alcoholic Beverages and Tobacco v. McKesson Corporation*, 574 So.2d 114 (Fla. 1991), and *Department of Revenue v. Magazine Publishers of America, Inc.*, 565 So.2d 1304 (Fla. 1990), *on remand, Department of Revenue v. Magazine Publishers of America, Inc.*, 604 So.2d 459 (Fla. 1992), give testimony that the Florida courts do, as this Court in *Great Lakes Dredge* demanded, permit a Florida taxpayer, in challenging a Florida tax, to "assert his federal rights and secure a review of them by this Court." In this case the circuit court and Florida Supreme Court both heard Petitioners' federal rights and decided the case in favor of the Petitioners based upon the State's violation of the Commerce Clause. Both courts granted Petitioners their requested declaratory relief under Florida's declaratory judgment law, Chapter 86, Florida Statutes.

Under the circumstances, the decision of the Supreme Court of Florida in *Kuhnlein* was not inconsistent with the Supremacy Clause and its requirement for uniformity and concurrency. Neither *Howlett*, nor any other decision of this Court, requires the states to hear a

claim for relief than cannot be heard in a federal court.

2. **THE DECISION BELOW DOES NOT CONFLICT WITH OTHER STATE SUPREME COURTS ON THE SAME QUESTION OF FEDERAL LAW**

Petitioners contend that the states are sharply divided over the question of a taxpayer's ability and right to raise the taxpayer's federal rights, and have those rights vindicated in a state court, when a state tax law conflicts with the federal right. However, there is no conflict over this point since the states have "plain, speedy and efficient" remedies. These remedies included an opportunity to have the taxpayer's federal rights heard in the state court and the ability to appeal a tax decision interpreting federal rights to the this Court. Because the states provide adequate remedies, there is no need to add a federal remedy, particularly one unavailable in federal court to the state taxpayer, just to provide an avenue for attorney's fees. Among those state decisions finding that where there are adequate state remedies there is no need to turn to § 1983 include *National Private Truck Council, Inc. v. Oklahoma Tax Commission*, 879 P.2d 137 (Okla.), *cert granted*, ___ U.S. ___, 115 S.Ct. 714 (1994); *State v. Quill*, 500 N.W.2d 196 (N.D.), *cert. denied*, ___ U.S. ___, 114 S.Ct. 173 (1993); *L.L. Beam, Inc. v. Bracy*, 323 S.E.2d 381 (Tenn. 1991); *Linderkamp v. Bismarck School District No.1*, 397 N.W.2d 76 (N.D. 1986), *Zizka v. Water*

Pollution Control Authority, 195 Conn. 682, 490 A.2d 509 (1985), *Davis v. City of Elkhorn*, 132 Wisc.2d 394, 393 N.W.2d 95 (1986); *Stufflebaum v. Panathiere*, 691 S.W.2d 271 (Mo. 1985); *Spencer v. South Carolina Tax Commission*, 281 S.C. 492, 316 S.E.2d 386 (1984), *affirmed by an equally divided court*, 471 U.S. 82 (1985); *W.H. Backus v. Chivilis*, 236 Ga. 370, 224 S.E.2d 370, 374-75 (1976); *Vann v. DeKalb County Bd. of Tax Assessors*, 186 Ga. App. 208, 367 S.E.2d 381 (1988); *Louisiana Life, Ltd. v. McNamara*, 504 So. 2d 900, 906 (La. App. 1 Cir. 1987); *Raschke v. Blancher*, 141 Ill.App.3d 813, 96 Ill.Dec. 711, 491 N.E.2d 1171, 1174 (1986); *Johnson v. Gaston County*, 71 N.C. App. 707, 323 S.E. 381 (1984).

The decisions of these states are consistent with the Tax Injunction Act, the Supremacy Clause and the decisions of this Court. State taxpayers "must seek protection of their federal rights by state remedies." *See, e.g., Fair Assessment*, 454 U.S., at 116. The principles of comity and federalism, in light of Congress' express intention to retain jurisdiction of state tax matters in state courts, require taxpayers to use state remedies in challenging state taxes. The end result is that there is uniformity throughout the United States. Federal courts do not hear state tax matters and state courts utilize state remedies in protecting federal rights.

CONCLUSION

Because there is no real conflict between the states on this question, the Writ in the case before this Court should be denied.

ROBERT A. BUTTERWORTH
Attorney General of Florida

ERIC J. TAYLOR
Assistant Attorney General
(Counsel of Record)

Office of the Attorney General
State of Florida
The Capitol, PL-01
Tallahassee, Fl 32399-1050
(904) 488-5899
(904) 488-6589 (FAX)

Counsel for Respondents